

1 Decision Date

15 February 2022

2 Duration of the Exemption

This exemption comes into force on 16 February 2022, and expires at the close of 15 February 2027.

3 Interpretation

(1) In this notice, unless the context otherwise requires—

Act means the Overseas Investment Act 2005

Assets means an interest in sensitive land as defined at section 12, and/or an interest in significant business assets as defined at section 13

Custodian has the meaning set out at section 6 of the FMCA

Exemption means the exemptions in paragraph 4 subject to the conditions in paragraph 5

FMCA means Financial Markets Conduct Act 2013

Manager has the meaning set out at section 6 of the FMCA.

MIS means managed investment scheme, as defined at section 9 of the FMCA

OIO means the Overseas Investment Office

Oyster means Oyster Property Group Limited (company number 5260021)

Oyster Group means:

- Oyster; and
- any person in which Oyster has, directly or indirectly, a 100% ownership or control interest, other than in the capacity of a Trustee or Manager

Oyster MIS means a MIS where:

- if the MIS involves retail investors, the Manager, Trustee, Custodian, and Supervisor are:
 - a member of Oyster Group; or
 - non-overseas persons;
 - exempt from the definition of overseas person
- if the MIS involves solely wholesale investors, the Manager and Trustee are:
 - a member of Oyster Group; or
 - non-overseas persons;
 - exempt from the definition of overseas person

Regulations means the Overseas Investment Regulations 2005

Supervisor has the meaning set out in section 6 of the FMCA

Trustee means, as required by the FMCA in relation to a MIS and in the ordinary course of business, holding or dealing with trust property for the benefit of specified beneficiaries (being product holders in a MIS).

(2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this Exemption has the same meaning as in the Act or the Regulations (as the case may be).

4 Exemption from the certain provisions of the Act

- (1) Each member of Oyster Group is exempt from the definition of *overseas person* for the purposes of determining whether:
 - (a) an Oyster MIS is an overseas person under the Act, where it would be a non-overseas person but for a member of Oyster Group acting as a Manager and/or a Trustee for that MIS;
 - (b) any member of Oyster Group is an overseas person under the Act when acting as a Manager for an Oyster MIS;
 - (c) a member of Oyster Group requires consent to enter into an agreement to acquire Assets where prior to the acquisition the intention is that the agreement be settled by the Custodian of an Oyster MIS.
- (2) Each member of Oyster Group is exempt from the definition of *associate* to the extent that it is an associate of another member of Oyster Group for the purposes set out in (1)(a)-(c).
- (3) The exemptions at (1) and (2) do not apply:
 - (a) to the extent that Oyster Group is acquiring Assets for its own benefit,
 - (b) to the settlement of a transaction that is not being settled by
 - (i) the Custodian of an Oyster MIS in the case of an MIS involving retail investors, or
 - (ii) the Trustee of an Oyster MIS in the case of an MIS involving wholesale investors.
 - (c) To the settlement of a transaction if a member of Oyster group is retaining a beneficial interest in the assets (other than interests exempt from the requirement for consent under the Act or Regulations).

5. Conditions of the Exemption

- (1) Oyster must notify the OIO by the following dates of the establishment of new Oyster MIS's that have acquired sensitive land:
 - (a) 22 April 2023, for the period until 31 December 2022,
 - (b) 22 April 2025, for the period from 1 January 2023 to 31 December 2024, and
 - (c) 22 April December 2027, for the period from 1 January 2025 to 15 February 2026.
- (2) This notification must include:
 - (a) the date upon which settlement of the acquisition of sensitive assets occurred;
 - (b) final consideration paid (plus GST, if any);
 - (c) the structure of the MIS, and the names and ownership of the parties involved;
 - (d) where applicable, copies of transfer documents and settlement statements; and
 - (e) any other information that would aid the OIO in its function to monitor the conditions of the Exemption.
- (3) If requested in writing by the OIO, the Exemption Holder must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:
 - (a) the representations and plans made or submitted in support of the application for the Exemption; or

(b) the conditions of the Exemption.

6. Amendment or revocation of the Exemption

The Exemption and conditions of the Exemption may at any time be amended or revoked by the Overseas Investment Office.

7. Sanctions

The Act provides for civil and criminal sanctions for breaching the Act, failing to comply with conditions of exemption and failing to provide information required by the Overseas Investment Office. The Overseas Investment Office has an obligation to investigate and act upon alleged and suspected breaches of the Act.

8. Reasons for Exemption

Oyster Property Group Limited (**Oyster**) is a New Zealand-based commercial property and fund manager. Oyster is 50% New Zealand owned and 50% owned by Cromwell Corporation Limited, an ASX-listed property fund manager which itself is 100% overseas owned. Oyster is therefore an overseas person under the Overseas Investment Act 2005 (**the Act**).

Oyster's investment products are predominantly (i.e. more than 75%) beneficially held by New Zealanders. Despite this, the managed investment schemes incorporated and managed by Oyster are overseas persons under the Act.

Section 61D of the Act provides for exemptions from the requirement for consent. There are two criteria for exemption in section 61E(1), namely:

- whether there are circumstances that mean that it is necessary, appropriate, or desirable to provide an exemption for any of the matters referred to in section 61B(a) to (c) of the Act, and
- that the extent of any exemption granted is not broader than reasonably necessary to address the circumstances referred to in the first criterion.

The criteria are met in this case.

- it is appropriate and desirable to provide an exemption because compliance with this Act in respect of Oyster establishing MIS arrangements is inefficient, and Oyster MIS entities meet the criteria in the Ministerial Directive Letter of 24 November 2021 to be considered "fundamentally New Zealand entities".
- the exemption is no broader than is reasonably necessary to address the particular circumstances; and
- it is reasonable to grant the exemption, having regard to the purpose of the Act and the matters set out in section 61E(2)(b).